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8 Attorneys for Specially-Appearing Defendant, J.P. ALLEN COMPANY dba  
9 HOLIDAY INN BURBANK-MEDIA CENTER

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

KEVIN WILSON,

Plaintiff,

v.

J.P. ALLEN COMPANY DBA  
HOLIDAY INN BURBANK-MEDIA  
CENTER, a California Corporation;  
and DOES 1 through 10, inclusive,

Defendants.

CASE NO. 13CV1431 BEN BLM

**SPECIALLY-APPEARING  
DEFENDANT'S NOTICE OF  
MOTION AND MOTION TO  
DISMISS PLAINTIFF'S  
COMPLAINT PURSUANT TO 28  
U.S.C. § 1406, OR  
ALTERNATIVELY, TRANSFER  
PURSUANT TO 28 U.S.C. § 1404;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION  
OF STEVEN L. RODRIGUEZ;  
[PROPOSED] ORDER**

*[Defendant's Request for Judicial  
Notice served concurrently herewith]*

**DATE: October 15, 2013  
TIME: 10:30 AM  
COURTROOM: 5A**

**TO DEFENDANT AND HIS ATTORNEY OF RECORD:**

**PLEASE TAKE NOTICE** that on October 15, 2013 at 10:30 a.m., or as  
soon thereafter as the matter may be heard in Courtroom 5A of the above-  
entitled court, located at 221 West Broadway in San Diego, California  
92101, Specially-Appearing Defendant, JP Allen Company dba Holiday Inn  
Burbank-Media Center (hereinafter "Defendant") will and hereby does move  
this Court for an order transferring this action to the United States District

1 Court for the Central District of California, or, alternatively, for an order  
2 dismissing this case without prejudice.

3 Said Motion is brought pursuant to Federal Rule of Civil Procedure  
4 12(b)(3), 28 U.S.C. §1406 and 28 U.S.C. §1404 and is based on upon this  
5 Notice, the attached Memorandum of Points and Authorities, the attached  
6 declaration of Steven L. Rodriguez, the [Proposed] Order, the records,  
7 pleadings and files of the Court herein, and all other relevant matters  
8 presented to this Court at the time of the hearing.

9  
10 DATED: September 5<sup>th</sup>, 2013 WOOD, SMITH, HENNING & BERMAN  
11 LLP

12  
13 By: 

14 STEVEN L. RODRIGUEZ

15 Attorneys for Specially-Appearing  
16 Defendant, J.P. ALLEN COMPANY dba  
17 HOLIDAY INN BURBANK-MEDIA  
18 CENTER  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. PROCEDURAL AND FACTUAL BACKGROUND**

On June 19, 2013, Plaintiff filed his Complaint in this matter. On August 21, 2013, Plaintiff Kevin Wilson (hereinafter "Plaintiff"), through his counsel of record, mailed counsel for Defendant J.P. Allen Company dba Holiday Inn Burbank-Media Center (hereinafter "Defendant") a Notice of Lawsuit and Request to Waive Service of a Summons. See Declaration of Steven L. Rodriguez (hereinafter "Rodriguez Decl."), ¶ 2. On August 27, 2013, attorneys of record for Defendant executed the Waiver of the Service of Summons on behalf of Defendant and sent Plaintiff the original executed waiver form in the self-addressed stamped envelope provided by Plaintiff's counsel. See Rodriguez Decl., ¶ 3.

Defendant is a wholly owned business entity, doing business within the State of California. See Rodriguez Decl., ¶ 4. Specifically, Defendant does business within the Cities of Burbank and Glendale, California. *Id.* Defendant does not conduct any business within the Southern District of California. See Rodriguez Decl., ¶ 5.

**II. FACTUAL BACKGROUND**

Plaintiff's Complaint seeks damages from Defendant in connection with an alleged slip and fall that occurred on the site of Defendant's property, located in Burbank, California, on February 11, 2012. See Plaintiff's Complaint (hereinafter "Complaint"), Page 2, lines 8-16 and Page 3, lines 14-15; See Rodriguez Decl., ¶ 6.

According to the Complaint, Plaintiff is a resident of the State of Louisiana. See Complaint, Page 1, lines 21-22. Plaintiff is bringing the current action in Federal Court pursuant to a claim of diversity jurisdiction under 28 U.S.C. § 1332 (requiring diversity of citizenship and an amount in controversy exceeding \$75,000). See Complaint, Page 2, lines 5-6.

1 Defendant's principal place of business is located in Burbank, California.

2 The site of the alleged incident is also in Burbank, California.

3       Given the foregoing facts, Plaintiff has entirely failed to state sufficient  
4 grounds for filing the present action in the Federal Court for the Southern  
5 District of California. As set forth below, neither the Plaintiff nor the  
6 Defendant have any connection with this District. Additionally, the events  
7 allegedly giving rise to the action also have no connection with the District  
8 whatsoever.

9       For these reasons, Defendant hereby moves pursuant to Federal Rule  
10 of Civil Procedure 12(b)(3) for an order dismissing this action for improper  
11 venue. In the alternative, Defendant moves, pursuant to 28 U.S.C. §  
12 1406(a), for an order dismissing this action; or, pursuant to 28 U.S.C. §  
13 1404(a), for an order transferring this case to the United States Court for the  
14 Central District of California.

## 15 **II. LEGAL ARGUMENT**

16       There are no facts giving rise to or supporting Plaintiff's filing of this  
17 lawsuit in the Southern District of California. The purpose of the federal  
18 venue rules "is to protect the *defendant* against the risk that a plaintiff will  
19 select an unfair or inconvenient place of trial." Leroy v. Great W. United  
20 Corp., 443 U.S. 173, 184 (1979). Issues raised in determining proper venue  
21 in federal actions are governed exclusively by federal law. See Stewart  
22 Org., Inc. v. Ricoh Corp., 487 U.S. 22, 27-28 (1988). Venue must be proper  
23 as to *each* defendant joined in the action, as well as to each claim. Hoover  
24 Group, Inc. v. Custom Metalcraft, Inc., 84 F.3d 1408, 410 (Fed. Cir. 1996).  
25 Once venue is challenged, it has long been the rule in the Ninth Circuit that  
26 the burden is on the plaintiff to establish that venue is proper. See Piedmont  
27 Label Co. v. Sun Garden Packing Co., 598 F.2d 491, 496 (9th Cir. 1979);  
28 see also King v. Vesco, 342 F. Supp. 120, 125 (N.D. Cal. 1972). In this

1 case, as set forth below, venue is wholly improper in the Southern District of  
 2 California. Therefore, this court should dismiss this case, pursuant to 28  
 3 U.S.C. § 1406(a) or transfer the case, pursuant to 28 U.S.C. § 1404(a).

4 **A. This Case Should Be Dismissed Pursuant to 28 U.S.C. § 1406(a)**  
 5 **Because Venue is Not Proper In the Southern District of**  
 6 **California**

7 Section 1406 of Title 28 of the United States Code provides judicial  
 8 guidelines for the handling of cases which are improperly venued.  
 9 Specifically, 28 U.S.C. § 1406(a), states:

10 The district court of a district in which is filed a case laying venue in the  
 11 wrong division or district ***shall dismiss***, or if it be in the interest of justice,  
 12 transfer such case to any district or division in which it could have been  
 13 brought. (emphasis added)

14 In other words, a district court may transfer a case brought in the  
 15 wrong division or district if doing so would be in the interest of justice<sup>1</sup>;  
 16 however, if such a transfer is denied, the court ***must*** dismiss the action. See  
 17 Hapaniewski v. City of Chicago Heights, 883 F.2d 576, 579 (7th Cir. 1989).

18 **(i) The Present Venue Is Improper Pursuant to 28 U.S.C. §**  
 19 **1391(b)**

20 Section 1390 *et seq.* of Title 28 of the United States Code governs the  
 21 rules related to issues of venue in Federal District Courts. Specifically, 28  
 22 U.S.C. 1391(b) identifies three alternatives under which venue may be  
 23 proper under this title. This section provides, in relevant part, that a civil  
 24 action may be brought (exclusively) in one of the following venues, except  
 25 as otherwise provided by law:

26  
 27 <sup>1</sup> The "interest of justice" constitutes a specific set of considerations enumerated and examined below  
 28

1 (1) a judicial district in which any defendant resides, if all  
 2 defendants are residents of the State in which the district is  
 located;

3 (2) a judicial district in which a substantial part of the events or  
 4 omissions giving rise to the claim occurred, or a substantial part  
 of property that is the subject of the action is situated; or

5 (3) if there is no district in which an action may otherwise be  
 6 brought as provided in this section, any judicial district in which  
 any defendant is subject to the court's personal jurisdiction with  
 7 respect to such action. (emphasis added)

8 In this case, none of these standards apply. First, the Defendant does  
 9 not reside in the Southern District of California. As set forth above, the sole  
 10 named defendant in this action is a business entity, doing business within  
 11 the City of Burbank, California (*i.e.*, within the Central District of California)  
 12 with no connection to the Southern District of California. Therefore,  
 13 subsection (1) cannot be used as a basis for asserting proper venue in this  
 14 matter.

15 Next, none of the events constituting a substantial part of the events  
 16 giving rise to Plaintiff's claim occurred in the Southern District. As pleaded,  
 17 all the alleged events or omissions giving rise to the claim occurred in  
 18 Burbank, California. The Complaint specifically alleges that the Plaintiff fell  
 19 at Defendant's premises, located in Burbank, California. See Plaintiff's  
 20 Complaint, page 1, lines 26-28 and page 2, lines 8-12. Therefore, as there is  
 21 likely no significant events which occurred in the Southern District and gave  
 22 rise to the claims alleged by Plaintiff, 28 U.S.C. § 1391(b) subsection (2) of  
 23 the foregoing statute is inapplicable.

24 Finally, as set forth below, there exists another, more preferable,  
 25 district in which this action may be brought. Subsection (3) of the foregoing  
 26 statute is only intended to apply if the first two subsections are inapplicable,  
 27 as applied to *any* district. However, as the Central district would constitute a  
 28 proper venue, by fulfilling the requirements of either subsection (1) or (2) of

1 the foregoing statute, subsection (3) is inapplicable as a basis for finding the  
2 Southern District of California to be a proper venue in this matter.

3 For the foregoing reasons, venue of this case in the Southern District  
4 of California is improper. Accordingly, Defendant respectfully requests that  
5 this court dismiss Plaintiff's Complaint, or in the alternative, transfer this  
6 case, pursuant to the provisions identified below.

7 **B. In The Alternative, For The Convenience Of The Parties, The**  
8 **Witnesses And In The Interests Of Justice, This Action**  
9 **Should Be Transferred To The US District Court for the**  
10 **Central District Of California Pursuant to 28 U.S.C. § 1404(a)**

11 Pursuant to 28 U.S.C. § 1404(a), a district court may transfer any civil  
12 action to any other district or division where it might have been brought by  
13 applying the following considerations: (1) the convenience of the parties; (2)  
14 the convenience of the witnesses; and (3) in the interest of justice. 28  
15 U.S.C. § 1404(a). In this case, should the Court determine to transfer this  
16 case, these factors weigh heavily in favor of transferring this case to the  
17 Central District of California.

18 **(i) The Central District of California Would Be More**  
19 **Convenient for the Parties**

20 There is no question that the Central District of California would be  
21 more convenient for the Defendant. The location of the Defendant's  
22 business and headquarters are in Burbank, California, in close proximity to  
23 the District Court of Central District of California. Defendant's employees  
24 reside in the Central District. Defendant's attorney's place of business lies  
25 within the Central District. Therefore, this location would make the  
26 attendance of Defendant's employees and representatives for appearances  
27 at hearings, matters related to alternative dispute resolution, and trial, if  
28 necessary, significantly less expensive. It would also take Defendant's



1 representatives significantly less time to attend these matters and would  
2 thereby also be much easier to schedule.

3 With regard to Plaintiff, it is unclear on what basis Plaintiff has filed this  
4 case in the Southern District of California. Plaintiff is a resident of Louisiana  
5 and his attorney resides in Texas. Given Plaintiff's original choice of venue  
6 (in the Southern District of California), and the suggested venue's relative  
7 proximity to the proposed court (compared to the current locations of  
8 residence for Plaintiff and his counsel), it does not appear that Plaintiff or his  
9 counsel would be severely inconvenienced by having the venue for this  
10 action relocated within the same state and to the Central District.

11 **(ii) The Central District of California Would Be More**  
12 **Convenient for the Witnesses**

13 For many of the same reasons as identified in the preceding section,  
14 the Central District of California would be more convenient for the witnesses  
15 in this case. Although Plaintiff has failed to plead sufficient facts to identify  
16 any witnesses to the alleged incident, presumably, any and all witnesses to  
17 the events surrounding this action (other than Plaintiff), are located near the  
18 site of the subject incident. At this point, the only witnesses Defendant  
19 contemplates Plaintiff will identify are employees of the Defendant,  
20 Emergency Medical Technicians who may have responded onsite and  
21 Health Care Professionals who administered care to the Plaintiff nearby the  
22 subject premises (located near the Central District of California court), if any.  
23 Without knowing the identities of the witnesses Plaintiff intends to call, for  
24 now Defendant can only assume that any of these prospective witnesses  
25 likely still work in the area immediately surrounding the subject premises.  
26 Therefore, provided that Plaintiff does not refute the foregoing and does not  
27 identify a number of specific witnesses that reside in the Southern District of  
28 California, Defendant submits that a change in venue would be more



1 convenient to all witnesses that will likely be identified in connection with  
 2 Plaintiff's claim, if any.

3 **(iii) The Interests of Justice Weigh In Favor of Transferring**  
 4 **This Case to the Central District of California**

5 Section 1404(a) of Title 28 of the United States Code "is intended to  
 6 place discretion in the district court to adjudicate motions for transfer  
 7 according to an 'individualized, case-by-case consideration of convenience  
 8 and fairness'." Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988);  
 9 See e.g. Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987).

10 On this basis, the Ninth Circuit Court of Appeals has identified a  
 11 number of factors that should be considered in determining whether a venue  
 12 transfer is in the "interests of justice": These include such private factors as  
 13 "(1) the location where the relevant agreements were negotiated and  
 14 executed,<sup>2</sup> (2) the state that is most familiar with the governing law, (3) the  
 15 plaintiff's choice of forum, (4) the respective parties' contacts with the forum,  
 16 (5) the contacts relating to the plaintiff's cause of action in the chosen forum,  
 17 (6) the differences in the costs of litigation in the two forums, (7) the  
 18 availability of compulsory process to compel attendance of unwilling non-  
 19 party witnesses, and (8) the ease of access to sources of proof." See Jones  
 20 v. GNC Franchising, Inc., 211 F.3d 495, 498-99 (9th Cir. 2000). This  
 21 determination may also consider such public factors as "the relevant public  
 22 policy of the forum state, if any."

23 These factors are more or less consistent across states. See e.g.  
 24 French Transit, Ltd. v. Modern Coupon Sys., Inc., 858 F. Supp. 22, 27  
 25 (S.D.N.Y. 1994) (wherein a New York based Federal Court applied the

26 \_\_\_\_\_  
 27 <sup>2</sup> As this case deals with a claim based on tort law, rather than contract law, this factor should likely relate  
 28 to the location where the conduct and events giving rise to the claim took place.

1 following factors: "(1) the convenience of parties; (2) the convenience of  
 2 witnesses; (3) the relative ease of access to sources of proof and the locus  
 3 of operative facts; (4) the availability of process to compel attendance of  
 4 unwilling witnesses; (5) the cost of obtaining willing witnesses; (6) the  
 5 practical problems indicating where the action can be tried more  
 6 expeditiously and inexpensively (e.g., calendar congestion); and (7) the  
 7 totality of circumstances." ).

8       Upon review of the foregoing factors, Defendant submits that any  
 9 determination as to venue by this court made according to the "interest of  
 10 justice" weighs in favor of venue in the Central District of California. Each of  
 11 the foregoing factors are addressed in turn.

12       The location of the conduct and events giving rise to the claim all took  
 13 place in Burbank, California. California law is controlling in this case, which  
 14 is brought in federal court on the basis of diversity jurisdiction. See Plaintiff's  
 15 Complaint, page 2, lines 5-6. Accordingly, transferring this case from one  
 16 court based in California to another court in the same state has no  
 17 prejudicial effect on the Plaintiff. As to Plaintiff's choice of forum, although,  
 18 as a general rule, the Plaintiff's choice of forum is accorded some deference,  
 19 when "the conduct and events giving rise to the cause of action did not take  
 20 place in the plaintiff's selected forum, the plaintiff's preference has minimal  
 21 value." TruServ Corp. v. Neff, 6 F. Supp. 2d 790, 794 (N.D. Ill. 1998). As the  
 22 events giving rise to Plaintiff's Complaint did not take place in the Southern  
 23 District of California, Plaintiff's choice of forum bears little weight in the  
 24 court's determination of this matter. As to contacts relating to Plaintiff's  
 25 cause of action, all relevant persons and places relating to Plaintiff's claims  
 26 are located near the Central District of California (specifically, Burbank,  
 27 California). Defendant is not aware of any significant costs differences  
 28 between the two venues. There is also likely little difference in the

1 availability of compulsory process to compel attendance of unwilling non-  
 2 party witnesses as the venue suggested in this Motion is within the same  
 3 state as the present venue. Most importantly, and as discussed  
 4 hereinabove, all witnesses and sources of proof relating to the subject  
 5 incident are located in close proximity to the District Court of the Central  
 6 District of California.

7 Therefore, if this Court decides to transfer this case rather than to  
 8 dismiss it, the Defendant submits that the best venue to relocate this case  
 9 would be to the Central District of California.

### 10 **III. CONCLUSION**

11 For all of the foregoing reasons, Defendant respectfully requests that  
 12 this Court dismiss Plaintiff's Complaint, pursuant to 28 U.S.C. § 1406(a) or  
 13 transfer this case to the Central District of California, pursuant to 28 U.S.C. §  
 14 1404(a), as set forth herein.

15 DATED: September <sup>5th</sup>, 2013 WOOD, SMITH, HENNING & BERMAN  
 16 LLP

17  
 18 By: 

STEVEN L. RODRIGUEZ

19 Attorneys for Specially-Appearing  
 20 Defendant, J.P. ALLEN COMPANY dba  
 21 HOLIDAY INN BURBANK-MEDIA  
 22 CENTER  
 23  
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**DECLARATION OF STEVEN L. RODRIGUEZ**

I, Steven L. Rodriguez, declare as follows:

1. I am an attorney at law duly admitted to practice before all courts of the State of California, including this District Court. I am an attorney with WOOD, SMITH, HENNING & BERMAN LLP, attorneys of record for Specially-Appearing Defendant JP Allen Company dba Holiday Inn Burbank-Media Center ("Defendant"). I know the following facts to be true of my own knowledge, and if called to testify, I could competently do so.

2. On August 21, 2013, Plaintiff Kevin Wilson (hereinafter "Plaintiff"), through his counsel of record, mailed counsel for Defendant J.P. Allen Company dba Holiday Inn Burbank-Media Center (hereinafter "Defendant") a Notice of Lawsuit and Request to Waive Service of a Summons.

3. On August 27, 2013, I executed the Waiver of the Service of Summons on behalf of Defendant. Counsel from my office then sent Plaintiff the original executed waiver form in the self-addressed stamped envelope provided by Plaintiff's counsel. Attached hereto as **Exhibit "1"** is a true and correct copy of the executed Waiver of the Service of Summons form.

4. Defendant is a wholly owned business entity, doing business within the State of California. Specifically, Defendant does business within the Cities of Burbank and Glendale, California.

5. Defendant does not conduct business within the Southern District of California.

6. Plaintiff's Complaint seeks damages from Defendant in connection with an alleged slip and fall occurring on the site of Defendant's property, located in Burbank, California, on February 11, 2012.

///

///

7. Defendant submits that since this case is currently improperly venued in the Southern District of California, this court should either dismiss the action or transfer it to the Central District of California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed September 5<sup>th</sup>, 2013, at Los Angeles, California.

Steven L. Rodriguez

WOOD, SMITH, HENNING & BERMAN LLP  
Attorneys at Law  
10960 WILSHIRE BOULEVARD, 18TH FLOOR  
LOS ANGELES, CALIFORNIA 90024-3804  
TELEPHONE 310-481-7600 ♦ FAX 310-481-7650

**EXHIBIT "1"**



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Refer to: 10093-0053

August 30, 2013

R. Kelp Littlefield, Esq  
Littlefield Law, LLC  
639 Loyola Avenue, Suite 1820  
New Orleans, LA 70113

Re: *Kevin Wilson v. J.P. Allen Company dba Holiday Inn Burbank-Media Center*  
Our Client: J.P. Allen Company  
Case No.: 13CV1431 BEN BLM

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Dear Counsel:

Enclosed please find the executed original of the waiver of service of summons in the above-referenced matter. As we discussed, we are returning this form to you to file. We will plan on filing our responsive pleadings accordingly. Thank you.

Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

By:   
STEVEN L. RODRIGUEZ  
ELAN BLOCH

SLR/EXB:ana

cc: Ms. Ceola McDonald, Esq.  
The Law Offices of Ceola McDonald  
19506 Highway 59 North, Suite 305  
Humble, Texas 77338

LEGAL:10093-0053/2731414.1



AO 399 (01/09) Waiver of the Service of Summons

## UNITED STATES DISTRICT COURT

for the  
Southern District of California

KEVIN WILSON

Plaintiff

v.

J.P. ALLEN COMPANY, ET AL

Defendant

Civil Action No. 13CV1431 BEN BLM

## WAIVER OF THE SERVICE OF SUMMONS

To: CEOLA McDONALD

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 08/21/2013, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date:

8/27/13

J.P. ALLEN COMPANY

Printed name of party waiving service of summons

Signature of the attorney or unrepresented party

STEVEN L. RODRIGUEZ

Printed name

WOOD, SMITH, HENNING & BERMAN LLP  
18th FLOOR,

10960 WILSHIRE BLVD, L.A., CA 94122

Address

SRDRIGUEZ@WSHBLAW.COM

E-mail address

310-481-7600

Telephone number

## Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does not include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

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Kelp Littlefield, Esq.  
Littlefield Law, LLC  
639 Loyola Ave., Suite 1820  
New Orleans, LA 70113

**CERTIFICATE OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 10960 Wilshire Boulevard, 18th Floor, Los Angeles, California 90024-3804.

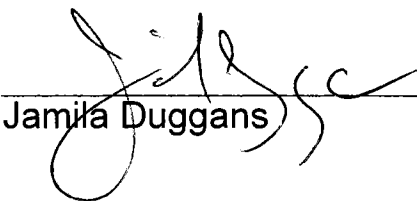
On September 11, 2013, I served the following document(s) described as **SPECIALLY-APPEARING DEFENDANT'S NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO 28 U.S.C. § 1406, OR ALTERNATIVELY, TRANSFER PURSUANT TO 28 U.S.C. § 1404; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF STEVEN L. RODRIGUEZ; [PROPOSED] ORDER** on the interested parties in this action as follows:

Ceola McDonald, Esq.  
The Law Office of Ceola McDonald  
19506 Highway 59 North  
Suite 305  
Humble, Texas 77338  
Tel: (281) 674-4876 / Fax: (310) 601-1853  
**Attorney for Plaintiff, KEVIN WILSON**

**BY MAIL:** I placed true copies of the foregoing document(s) enclosed in sealed envelopes addressed as shown on the Service List. I am "readily familiar" with Wood, Smith, Henning & Berman's practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, California, on that same day following ordinary business practices.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 11, 2013, at Los Angeles, California.

  
\_\_\_\_\_  
Jamila Duggans